

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

**ENERGY DIVISION**

**Item 19**  
**Agenda ID #12077**  
**RESOLUTION E-4587**  
**May 9, 2013**

**REDACTED**  
**RESOLUTION**

Resolution E-4587. San Diego Gas & Electric Company requests approval of an amendment to a renewable energy power purchase agreement with Covanta Delano, Inc.

PROPOSED OUTCOME: This Resolution approves cost recovery for the amended renewable energy power purchase agreement with Covanta Delano, Inc.

SAFETY CONSIDERATIONS: The agreements approved by this resolution will not alter existing agreements or any facility operations. Because this agreement does not require a change in facility operations there are no incremental safety implications associated with approval of this agreement beyond the status quo.

ESTIMATED COST: Costs of the amended power purchase agreement are confidential at this time.

By Advice Letter 2459-E filed on February 13, 2013.

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**SUMMARY**

**San Diego Gas & Electric Company's renewable energy power purchase agreement, as amended, with Covanta Delano, Inc. complies with the Renewables Portfolio Standard procurement guidelines and is approved.**

San Diego Gas & Electric Company (SDG&E) filed Advice Letter 2459-E on February 13, 2013, requesting California Public Utilities Commission (Commission) review and approval of a renewable energy power purchase agreement, as amended, between SDG&E and Covanta Delano, Inc. The amended PPA is for generation from an operating 49 megawatt biomass facility in Delano, California. The bilaterally negotiated amendment increases the power

purchase agreement price for the remainder of the contract term and gives SDG&E the right to terminate the power purchase agreement earlier than its current expiration date. The 10 year term of the original power purchase agreement began on January 1, 2008. The facility's units began commercial operation in 1990 and 1993.

This resolution approves the Covanta Delano, Inc. power purchase agreement, as amended. SDG&E's execution of this amended power purchase agreement is consistent with SDG&E's 2012 RPS Procurement Plan, which the Commission approved in Decision 12-11-016.

Deliveries under the amended Covanta Delano, Inc. power purchase agreement, as amended, are reasonably priced and fully recoverable in rates over the life of the power purchase agreement, subject to Commission review of SDG&E's administration of the power purchase agreement, as amended.

The following table provides a summary of the Covanta Delano, Inc. power purchase agreement:

Generating Facilities	Technology Type	Term (Years)	Capacity (MW)	Energy (GWh/year)	Amendment Effective Date	Location
Delano Energy	Biomass	10 <sup>1</sup>	49	343	1/1/2012	Delano, CA

## **BACKGROUND**

### **Overview of the Renewables Portfolio Standard (RPS) Program**

The California RPS Program was established by Senate Bill (SB) 1078, and has been subsequently modified by SB 107, SB 1036 and SB 2 (1X).<sup>2</sup> The RPS program

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<sup>1</sup> The original Delano PPA contract term is for 10 years. The proposed amendment would apply only to the period of January 1, 2012 to December 31, 2017 and does not affect the original term length of 10 years.

<sup>2</sup> SB 1078 (Sher, Chapter 516, Statutes of 2002); SB 107 (Simitian, Chapter 464, Statutes of 2006); SB 1036 (Perata, Chapter 685, Statutes of 2007); SB 2 (1X) (Simitian, Chapter 1, Statutes of 2011, First Extraordinary Session).

is codified in Public Utilities Code Sections 399.11-399.20.<sup>3</sup> Under SB 2 (1X),<sup>4</sup> the RPS program administered by the Commission requires each retail seller to increase its total procurement of eligible renewable energy resources so that the amount of electricity generated per year from eligible renewable resources be increased to an amount that equals an average of 20% of the total electricity sold to retail customers in California for the period 2011-2013; 25% of retail sales by December 31, 2016; and 33% of retail sales by December 31, 2020.<sup>5</sup>

Additional background information about the Commission's RPS Program, including links to relevant laws and Commission decisions, is available at <http://www.cpuc.ca.gov/PUC/energy/Renewables/overview.htm> and <http://www.cpuc.ca.gov/PUC/energy/Renewables/decisions.htm>.

## **NOTICE**

Notice of Advice Letters 2459-E was made by publication in the Commission's Daily Calendar. SDG&E states that copies of the Advice Letter were mailed and distributed in accordance with Section IV of General Order 96-B.

## **PROTESTS**

SDG&E Advice Letter 2459-E was not protested.

## **DISCUSSION**

**San Diego Gas & Electric Company requests approval of an amended renewable energy power purchase agreement with Covanta Delano, Inc.**

On February 13, 2013, San Diego Gas and Electric Company (SDG&E) filed Advice Letter (AL) 2459-E requesting California Public Utilities Commission (Commission) approval of an amendment to a Commission-approved power purchase agreement (PPA) with Covanta Delano, Inc. (Delano).<sup>6</sup> The amendment is the result of bilateral negotiations between SDG&E and Delano.

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<sup>3</sup> All further references to sections refer to Public Utilities Code unless otherwise specified.

<sup>4</sup> SB 2 (1X) became effective on December 10, 2011.

<sup>5</sup> See SB 2 (1X) § 399.15(b)(2)(B).

<sup>6</sup> The Delano PPA was approved on April 12, 2007 by Resolution E-4437.

The proposed amendment (i) increases the PPA price and (ii) provides SDG&E the right to terminate the PPA earlier than its current expiration date upon appropriate notice to Delano.

The Delano PPA, as amended, concerns generation from the operating Delano Energy biomass facility located in Delano, California. The Delano facility has been providing RPS-eligible generation pursuant to the Delano PPA approved by the Commission in E-4437 (Original PPA) since January 1, 2008. In AL 2459, SDG&E states that Delano requested a PPA price increase due to the loss of a \$15 per megawatt-hour (MWh) subsidy that expired December 31, 2011.<sup>7</sup> SDG&E further states that the increased PPA price will allow Delano facility to continue to operate and recover its costs while earning a fair return.

The facilities are currently operating. Thus, generation from the facilities is contributing towards SDG&E's RPS Compliance Period 2011-2013 requirements and could also count towards SDG&E's RPS requirements in Compliance Period 2014-2016 and Compliance Period 2017-2020.<sup>8</sup> The Delano project is expected to annually generate approximately 343 gigawatt-hours (GWh) of RPS-eligible generation.

**SDG&E requests that the Commission issue a resolution that:**

1. The PPA, as amended by the proposed agreement, is reasonable and consistent with SDG&E's Commission-approved RPS Plan and; procurement from the PPA, as amended by the proposed agreement, will contribute towards SDG&E's RPS procurement obligation.
2. SDG&E's entry into the proposed agreement and the terms of such proposed agreement are reasonable; therefore, the proposed agreement is approved in its entirety and all costs of the purchase associated with the PPA, as amended by the proposed agreement, including for energy, green attributes, and resource adequacy are fully recoverable in rates over the life of the PPA as amended by the proposed agreement, subject to

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<sup>7</sup> The subsidy was provided by the California Energy Commission and funded by a Public Goods Charge.

<sup>8</sup> In addition to raising California's RPS requirement to 33% from 20%, SB 2 (1X) (Stats. 2011 (Simintian)) establishes three different compliance periods, 2011-2013, 2014-2016, and 2017-2020.

Commission review of SDG&E's administration of the PPA, as amended by the proposed agreement.

3. Generation procured pursuant to the PPA, as amended by the proposed agreement, constitutes generation from an eligible renewable energy resource for purposes of determining SDG&E's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewable Portfolio Standard program (Public Utilities Code §§ 399.11, et seq. and/or other applicable law) and relevant Commission decisions.
4. The PPA, as amended by the proposed agreement, will contribute to SDG&E's minimum quantity requirement established in D.12-06-038.

**Energy Division Evaluated the Delano PPA, as amended by the proposed fourth amendment, on the following criteria:**

- Consistency with bilateral contracting rules;
- Consistency with SDG&E's 2012 RPS Procurement Plan;<sup>9</sup>
- Consistency with SDG&E's Least-Cost, Best-Fit requirements;
- RPS Procurement Portfolio Need;
- Cost Reasonableness and Net Market Value;
- Consistency with RPS Standard Terms and Conditions;
- Consistency with Portfolio Content Categories Requirements;
- Public Safety
- Compliance with the Interim Greenhouse Gas Emissions Performance Standard;
- Independent Evaluator review;
- Procurement Review Group participation;

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<sup>9</sup> At the time the amendment was executed, SDG&E's 2012 RPS Procurement Plan had been recently approved by the Commission, however SDG&E had not yet conducted its 2012 RPS Solicitation. Thus, the amendment is review for consistency with SDG&E's 2012 RPS Plan, but compared for price and value reasonableness relative to its most recent RPS solicitation, which was its 2011 RPS solicitation.

- Long-Term Contracting Requirement; and
- Project Viability Assessment.

### **Consistency with Bilateral Contracting Rules**

The amendment to the Delano PPA was negotiated bilaterally. According to SDG&E, the parties pursued bilateral negotiations because the amendment dealt with an existing contract that was already providing energy pursuant to the original contract.

In D.06-10-019, modified by D.07-07-025, the Commission established rules pursuant to which the IOUs could enter into bilateral RPS contracts. SDG&E adhered to these bilateral contracting rules because the amended Delano PPA is longer than one month in duration, was filed by advice letter, and was subject to the use of an Independent Evaluator (IE) pursuant to D.04-12-048.

In D.09-06-050, this Commission determined that bilateral agreements should be reviewed according to the same processes and standards as projects that come through a solicitation. Accordingly, as described below, the amended Delano PPA was compared to RPS offers received in SDG&E's 2011 RPS solicitation and recently executed contracts; the proposed agreement was reviewed by SDG&E's Procurement Review Group; and an Independent Evaluator oversaw the project evaluation and amendment negotiation. Also, the amended contract is reasonably priced, as discussed in more detail below.

The Delano PPA, as amended, is consistent with the bilateral contracting guidelines established in D.06-10-019 and D.09-06-050.

### **Consistency with SDG&E's 2012 RPS Procurement Plan**

Pursuant to statute, SDG&E's 2012 RPS Procurement Plan (Plan) includes an assessment of supply and demand to determine the optimal mix of renewable generation resources, consideration of flexible compliance mechanisms established by the Commission, and a bid solicitation protocol setting forth the need for renewable generation of various operational characteristics.<sup>10</sup> California's RPS statute also requires that the Commission review the results of a

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<sup>10</sup> Pub. Util. Code § 399.13(a)(5).

renewable energy resource solicitation submitted for approval by a utility.<sup>11</sup> The Commission reviews the results to verify that the utility conducted its solicitation according to its Commission-approved procurement plan.<sup>12</sup>

In SDG&E's 2012 RPS Plan, SDG&E expressed a commitment to meet its RPS requirements in a cost-effective manner. SDG&E's 2012 RPS Plan called for SDG&E to issue competitive solicitations for the purchase and sale of RPS-eligible energy and/or renewable energy credits (RECs). SDG&E also stated in its Plan that bilateral offers would be considered if they were competitive when compared against recent solicitation offers and provide benefits to SDG&E customers. SDG&E further stated that it would consider short-term contracts when it is short in the most immediate Compliance Period, but long in the subsequent Compliance Period. In addition, SDG&E noted that it would consider procurement strategies that maximize the product category limitations in order to optimize ratepayer value across compliance periods. Lastly, SDG&E's Plan discussed utility plans to pursue renewable energy generation development partnerships and utility-owned resources.

The amended Delano PPA is a contract for renewable generation that fits the requirements SDG&E identified in its 2012 RPS Procurement Plan. The amended PPA is for generation pursuant to an existing 10-year contract from an operating renewable energy facility. The amended PPA will allow the facility to continue operation and provide RPS-eligible generation in through its existing contract term.

The Delano PPA, as amended, is consistent with SDG&E's 2012 RPS Procurement Plan, as approved by D.12-11-016.

### **Consistency with SDG&E's least-cost best-fit (LCBF) methodology**

In D.04-07-029, the Commission directs the utilities to use certain criteria in their LCBF selection of renewable resources. The decision offers guidance regarding the process by which the utility ranks bids in order to select or "shortlist" the bids with which it will commence negotiations. As described in its 2012 RPS Procurement Plan, SDG&E's LCBF bid evaluation includes a quantitative

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<sup>11</sup> Pub. Util. Code § 399.13(d).

<sup>12</sup> SDG&E's 2012 RPS Procurement Plan was approved by D.12-11-016 on November 8, 2012.

analysis and qualitative criteria. SDG&E's quantitative analysis or market valuation includes evaluation of energy value, capacity value, price, time of delivery factors, transmission upgrade costs, congestion costs, and deliverability. SDG&E's qualitative analysis focuses on comparing similar bids across numerous factors, such as location, benefits to minority and low income areas, resource diversity, etc.

SDG&E negotiated the amendment bilaterally. Therefore, the amended PPA did not compete directly with other RPS projects. In AL 2459-E, SDG&E explains that it evaluated the Delano PPA, as amended, using the same LCBF evaluation methodology it employs for evaluating bids from its annual RPS solicitations. Thus, SDG&E used its LCBF methodology to evaluate the amended Delano PPA. See the "Cost Reasonableness and Net Market Value" section of this resolution for a discussion of how the amended Delano PPA compares to SDG&E's 2011 RPS solicitation and recently executed contracts. In addition, see Confidential Appendix A for SDG&E's LCBF evaluation of the project.

The Delano PPA, as amended, was evaluated consistent with the LCBF methodology identified in SDG&E's RPS Procurement Plan

### **SDG&E's RPS Procurement Portfolio Need**

Energy Division forecasts SDG&E to not have a need in Compliance Period 2011-2013 and Compliance Period 2014-2016.<sup>13</sup> This Energy Division forecast takes into account a certain amount of contract failure with SDG&E's RPS procurement portfolio. Figure 1 below depicts Energy Division's forecast of SDG&E's RPS net long/short position for each compliance period under a risk-adjusted scenario.<sup>14</sup> This graphical illustration shows that SDG&E is forecasted to have a need for

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<sup>13</sup> In addition to increasing California's RPS requirement to 33 percent from 20 percent, SB 2 (1X) (Simitan, Chapter 1, Statutes of 2011, First Extraordinary Session) establishes three different compliance periods. In D.11-12-020 the Commission defined the compliance periods (2011-2013; 2014-2016; and 2017-2020) and the methodology for calculating the RPS procurement quantity requirements for each compliance period.

<sup>14</sup> Energy Division staff's forecast of SDG&E's RPS Procurement Portfolio is based on SDG&E's December 2012 Preliminary 2011 Preliminary Annual Compliance Report, SDG&E's March 2013 Project Development Status Report, and the Commission's RPS Project Status Table. The Commission's forecast does not include any contracts pending Commission approval, executed - but not filed, nor contracts under negotiation.

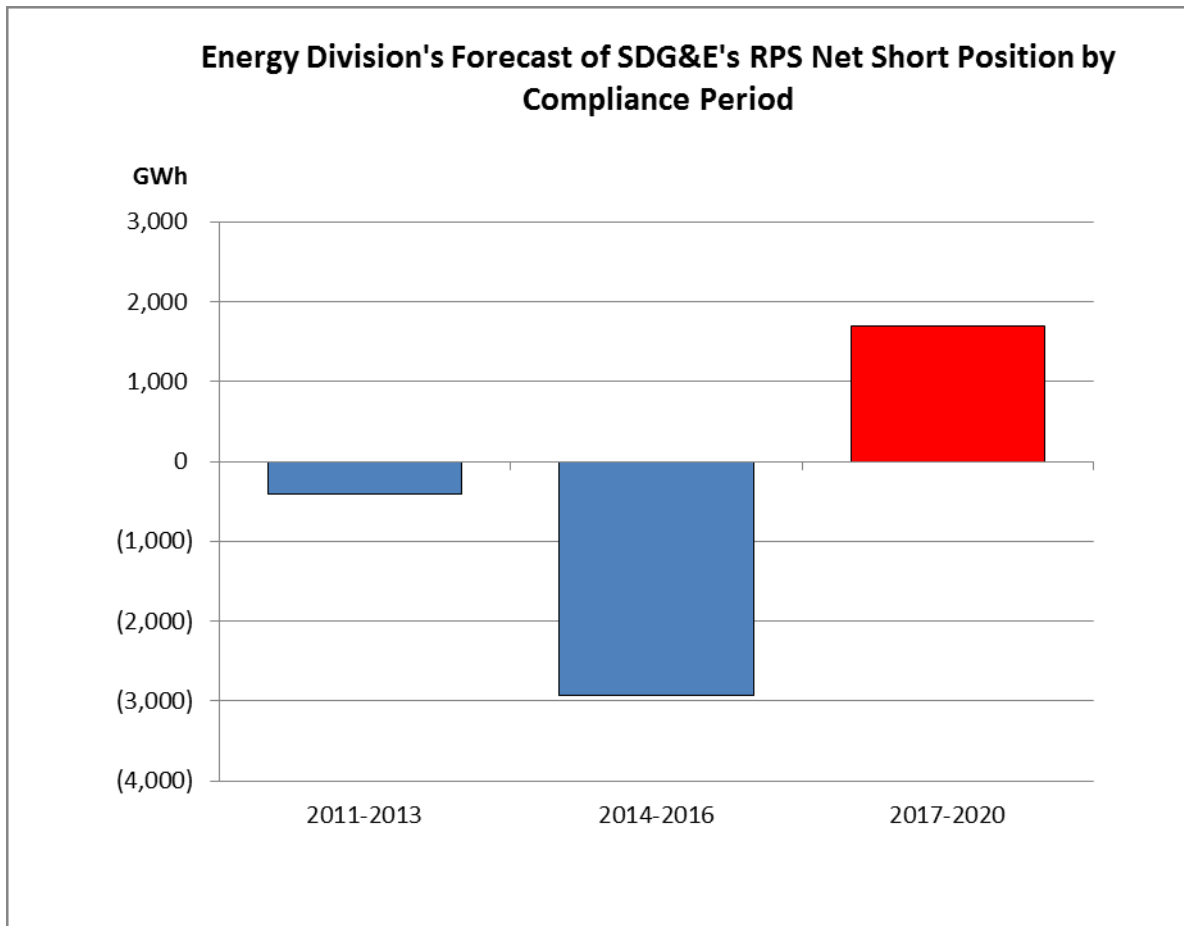


incremental RPS procurement in the third compliance period, but has sufficient RPS resources under contract during the Compliance Period 2011-2013 and Compliance Period 2014-2016.<sup>15</sup> All or a portion of the forecasted excess procurement from the second compliance period could potentially be applied towards future RPS requirements, and thus could reduce SDG&E's RPS needs in compliance period three or later.

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<sup>15</sup> Energy Division staff made several assumptions in developing its forecast: 1) operational projects will generate 100% of contracted generation; 2) projects under development will have a 70 percent rate of meeting the terms and conditions of the PPAs; 3) no carrying over of forecasted excess generation from one compliance period to another because SDG&E may or may not choose to apply all excess procurement towards subsequent requirements (but, if all forecasted eligible excess procurement is applied to future compliance periods, SDG&E is forecasted to have a net long position, instead of a net short position, for Compliance Period 2017-2020); and 4) prior deficits need to be satisfied.

**Figure 1: Energy Division forecasts that SDG&E may have a need for incremental RPS procurement in the third compliance period, 2017-2020**



As noted above, the Delano facility is currently providing generation to SDG&E pursuant to an existing contract. Thus, generation from the facility is already included in SDG&E's and Energy Division's forecasts of SDG&E's RPS position and the amendment to Delano PPA does not affect SDG&E's RPS forecasted need position. If the amendment were not approved, SDG&E's RPS portfolio would actually decrease and SDG&E would likely need to procure additional RPS-eligible resources to ensure near-term RPS compliance. The amendment also allows gives SDG&E the right to terminate the Original PPA earlier than its current expiration date of December 31, 2017. Thus, if needed, SDG&E could terminate the contract when it does not have an anticipated need in the later years of the PPA term.

### **Cost Reasonableness and Net Market Value**

The Commission's reasonableness review for RPS PPAs includes a comparison of the proposed PPA's price and net market value (the result of the LCBF calculation) relative to other RPS offers received in recent RPS solicitations and to contracts executed in the 12 months prior to the proposed PPA's execution date. Using this methodology and the confidential analysis provided by SDG&E in AL 2459-E, the Commission determines that the net market value of the Delano PPA, as amended, is comparable to other RPS offers and that the costs of the Delano PPA, as amended, are reasonable. (See Confidential Appendix A for a discussion of the contractual pricing terms.) Additionally, the IE states that the amendment appears desirable relative to the 2011 RFO shortlist.

The Delano PPA, as amended, is reasonable from a price and net market value basis compared to the results of SDG&E's 2011 RPS solicitation and other recently executed contracts.

Payments made by SDG&E under the Delano PPA, as amended, are fully recoverable in rates over the life of the amended PPA, subject to Commission review of SDG&E's administration of the PPA and amendments.

### **Consistency with RPS Standard Terms and Conditions**

The Commission adopted a set of standard terms and conditions (STCs) required in RPS contracts, four of which are considered "non-modifiable." The STCs were compiled in D.08-04-009 and subsequently amended in D.08-08-028. More recently in D.10-03-021, as modified by D.11-01-025, the Commission further refined these STCs.

The Delano PPA, as amended, includes the Commission adopted RPS "non-modifiable" standard terms and conditions, as set forth in D.08-04-009, D.08-08-028, and D.10-03-021, as modified by D.11-01-025.

### **Consistency with Portfolio Content Category Requirements**

In D.11-12-052, the Commission defined and implemented portfolio content categories for the RPS program and authorized the Director of Energy Division to require the investor-owned utilities to provide information regarding the proposed contract's portfolio content category classification in each advice letter seeking Commission-approval of an RPS contract. The purpose of the information is to allow the Commission to evaluate the claimed portfolio content category of the proposed RPS PPA and the risks and value to ratepayers if the

proposed PPA ultimately results in renewable energy credits in another portfolio content category.

In AL 2459-E, SDG&E states that procurement resulting from the Delano PPA, as amended, will not be claimed as procurement from one of the portfolio content categories defined in D.11-12-052. Instead, SDG&E asserts that the PPA, as amended, meets the conditions set forth in Pub. Util. Code § 399.16(d).<sup>16</sup> In support of its assertion, SDG&E states in AL 2459-E that the Original PPA was executed prior to June 1, 2010 and that the nameplate capacity, expected quantities of annual generation and renewable energy resource are the same as the Original PPA.

Consistent with D.11-12-052, SDG&E provided information in AL 2459-E regarding the expected portfolio content category classification of the renewable energy credits to be procured pursuant to the amended Delano PPA.

In this resolution, the Commission makes no determination regarding the Delano PPA's portfolio content category classification or whether it satisfies the conditions of Pub. Util. Code § 399.16(d). The RPS contract evaluation process is separate from the RPS compliance and portfolio content category classification process, which requires consideration of several factors based on various showings in a compliance filing. Thus, making a portfolio content category classification determination in this resolution regarding the procurement considered herein is not appropriate. SDG&E should incorporate the procurement resulting from the amended Delano PPA and all applicable supporting documentation to demonstrate portfolio content category classification in the appropriate compliance showing(s) consistent with all applicable RPS program rules.

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<sup>16</sup> The conditions set forth in Pub. Util. Code § 399.16(d) are:

1. The renewable energy resource was eligible under the rules in place as of the date when the contract was executed.
2. For an electrical corporation, the contract has been approved by the commission, even if that approval occurs after June 1, 2010.
3. Any contract amendments or modifications occurring after June 1, 2010, do not increase the nameplate capacity or expected quantities of annual generation, or substitute a different renewable energy resource. The duration of the contract may be extended if the original contract specified a procurement commitment of 15 or more years.

## **Public Safety**

California Public Utilities Code Section 451 requires that every public utility maintain adequate, efficient, just, and reasonable service, instrumentalities, equipment and facilities to ensure the safety, health, and comfort of the public.

This resolution approves an amended contract. The amended Delano PPA does not alter facility operations. As this agreement does not require a change in facility operations, there are no incremental safety implications associated with approval of this amended contract beyond the status quo. Based on the information before us, this amended contract does not appear to result in any adverse safety impacts on the facilities or operations of SDG&E.

## **Compliance with the Interim Greenhouse Gas Emissions Performance Standard**

California Pub. Util. Code §§ 8340 and 8341 require that the Commission consider emissions costs associated with new long-term (five years or greater) baseload power contracts procured on behalf of California ratepayers.<sup>17</sup>

D.07-01-039 adopted an interim Emissions Performance Standard (EPS) that establishes an emission rate for obligated facilities at levels no greater than the greenhouse gas (GHG) emissions of a combined-cycle gas turbine power plant. Generating facilities using certain renewable resources are deemed compliant with the EPS.<sup>18</sup>

Thus, while the Delano PPA, as amended, is a long-term contract for baseload power, it meets the conditions for EPS compliance because it is for generation from an EPS-compliant technology.

## **Independent Evaluator Review**

SDG&E retained independent evaluator (IE) Jonathan Jacobs of PA Consulting Group to oversee SDG&E's bilateral negotiations with Covanta Delano and to

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<sup>17</sup> "Baseload generation" is electricity generation at a power plant "designed and intended to provide electricity at an annualized plant capacity factor of at least 60%." Pub. Util. Code § 8340 (a).

<sup>18</sup> D.07-01-039, Attachment 7, p. 4.

evaluate the overall merits for CPUC approval of the amended PPA. AL 2459-E included both public and confidential independent evaluator's reports for the amended Delano PPA.

In the IE report, the IE states that overall the amended PPA merits Commission approval given that without the amendment SDG&E's RPS compliance in Compliance Period 2011-2013 could be "endangered."<sup>19</sup>

Consistent with D.06-05-039 and D.09-06-050, an independent evaluator oversaw SDG&E's procurement process and negotiations with Covanta Delano.

### **Procurement Review Group Participation**

The Procurement Review Group (PRG) was initially established in D.02-08-071 to provide non-market participants with access to the details of the IOUs' overall procurement strategy, solicitations, specific proposed procurement contracts and other procurement processes prior to the IOU submitting filings to the Commission.<sup>20</sup> SDG&E asserts that the Delano PPA and proposed amendment were discussed at PRG meetings in February, August, September, October, and November of 2012.

Pursuant to D.02-08-071, SDG&E's Procurement Review Group participated in the review of the amended Delano PPA.

### **Long-Term Contracting Requirement**

In D.12-06-038, the Commission established a long-term contracting requirement that must be met in order for retail sellers to count RPS procurement from contracts less than 10 years duration for compliance with the RPS program.<sup>21</sup> In order for the procurement from any short-term contract(s) signed after

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<sup>19</sup> Report of the Independent Evaluator on Amendment No. 1 to the Covanta Delano contract, relative to the shortlist from the 2011 Request for Offers from Eligible Renewable Resources (2011 Renewable RFO), February 12, 2013, pp. 6-7.

<sup>20</sup> SDG&E's PRG includes representatives of the Union of Concerned Scientists, the Coalition of California Utility Employees, The Utility Reform Network, the California Public Utility Commission's Energy Division and Division of Ratepayer Advocates, and the California Department of Water Resources.

<sup>21</sup> For the purposes of the long-term contracting requirement, contracts of less than 10 years duration are considered "short-term" contracts. (D.12-06-038).

June 1, 2010 to count for RPS compliance the retail seller must execute long-term contract(s) in the same compliance period in which the short-term contract(s) is signed. The volume of expected generation in the long-term contract(s) must be sufficient to cover the volume of generation from the short-term contract(s).<sup>22</sup>

Because the Delano PPA was executed prior to June 1, 2010 and the amendment does not affect contract term length, the amended contract has no effect on SDG&E's long-term contracting requirement for Compliance Period 2011-2013.

### **Project Viability Assessment**

SDG&E asserts that there are no viability issues and that the Delano facility will continue to provide RPS-eligible generation according to the terms and conditions in the PPA, as amended. SDG&E bases its assertion on the fact that the facility is currently operating and has been providing generation pursuant to the Original PPA.

### **RPS Eligibility and CPUC Approval**

Pursuant to Pub. Util. Code § 399.13, the CEC certifies eligible renewable energy resources. Generation from a resource that is not CEC-certified cannot be used to meet RPS requirements. To ensure that only CEC-certified energy is procured under a Commission-approved RPS contract, the Commission has required standard and non-modifiable “eligibility” language in all RPS contracts. That language requires a seller to warrant that the project qualifies and is certified by the CEC as an “Eligible Renewable Energy Resource,” that the project’s output delivered to the buyer qualifies under the requirements of the California RPS, and that the seller uses commercially reasonable efforts to maintain eligibility should there be a change in law affecting eligibility.<sup>23</sup>

The Commission requires a standard and non-modifiable clause in all RPS contracts that requires “CPUC Approval” of a PPA to include an explicit finding that “any procurement pursuant to this Agreement is procurement from an

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<sup>22</sup> Pursuant to D.12-06-038, the methodology setting the long-term contracting requirement is: 0.25% of Total Retail Sales in 2010 for the first compliance period; 0.25% of Total Retail Sales in 2011-2013 for the second compliance period; and 0.25% of Total Retail Sales in 2014-2016 for the third compliance period.

<sup>23</sup> See, e.g. D.08-04-009 at Appendix A, STC 6, Eligibility.

eligible renewable energy resource for purposes of determining Buyer's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (*Public Utilities Code Section 399.11 et seq.*), Decision 03-06-071, or other applicable law.”<sup>24</sup>

Notwithstanding this language, the Commission has no jurisdiction to determine whether a project is an eligible renewable energy resource, neither can the Commission determine prior to final CEC certification of a project, that “any procurement” pursuant to a specific contract will be “procurement from an eligible renewable energy resource.”

Therefore, while we include the required finding here, this finding has never been intended, and shall not be read now, to allow the generation from a non-RPS-eligible resource to count towards an RPS compliance obligation. Nor shall such finding absolve the seller of its obligation to obtain CEC certification, or the utility of its obligation to pursue remedies for breach of contract. Such contract enforcement activities shall be reviewed pursuant to the Commission’s authority to review the utilities’ administration of contracts.

### **Confidential Information**

The Commission, in implementing Pub. Util. Code § 454.5(g), has determined in D.06-06-066, as modified by D.07-05-032, that certain material submitted to the Commission as confidential should be kept confidential to ensure that market sensitive data does not influence the behavior of bidders in future RPS solicitations. D.06-06-066 adopted a time limit on the confidentiality of specific terms in RPS contracts. Such information, such as price, is confidential for three years from the date the contract states that energy deliveries begin, except contracts between IOUs and their affiliates, which are public. In this instance the Original PPA is public because it has been more than three years since deliveries began. The amendment, however, will be confidential for three years from the effective date of the amendment.

The confidential appendices, marked "[REDACTED]" in the public copy of this resolution, as well as the confidential portions of the advice letter, should remain confidential at this time.

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<sup>24</sup> See, e.g. D.08-04-009 at Appendix A, STC 1, CPUC Approval.



## **COMMENTS**

This is an uncontested matter in which the resolution grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

## **FINDINGS AND CONCLUSIONS**

1. The Delano PPA, as amended, is consistent with the bilateral contracting guidelines established in D.06-10-019 and D.09-06-050.
2. The Delano PPA, as amended, is consistent with SDG&E's 2012 RPS Procurement Plan, as approved by D.12-11-016.
3. The Delano PPA, as amended, was evaluated consistent with the least-cost best-fit methodology identified in SDG&E's RPS Procurement Plan.
4. The Delano PPA, as amended, reasonably compares from a price and net market value basis to the results of SDG&E's 2011 RPS solicitation and recently executed contracts.
5. Payments made by SDG&E under the Delano PPA, as amended, are fully recoverable in rates over the life of the amended PPA, subject to Commission review of SDG&E's administration of the amended PPA.
6. The Delano PPA, as amended, includes the Commission-adopted RPS "non-modifiable" standard terms and conditions, as set forth in D.08-04-009, D.08-08-028, and D.10-03-021, as amended by D.11-01-025.
7. Consistent with D.11-12-052, SDG&E provided information in AL 2459-E regarding the expected portfolio content category classification of the renewable energy credits procured pursuant to the amended Delano PPA.
8. The Delano PPA, as amended, meets the conditions for EPS compliance because it is for generation from an EPS-compliant technology.
9. Pursuant to D.02-08-071, SDG&E's Procurement Review Group participated in the review of the Delano PPA and amendment.
10. Because the Delano PPA was executed prior to June 1, 2010 and the amendment does not affect contract term length, the amended contract has no effect on SDG&E's long-term contracting requirement for Compliance Period 2011-2013.
11. SDG&E asserts that the Delano facility is viable and will provide renewable energy according to the terms and conditions in the Delano PPA, as amended.

12. Procurement pursuant to the amended Delano PPA is procurement from eligible renewable energy resources for purposes of determining SDG&E's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), D.03-06-071 and D.06-10-050, or other applicable law.
13. The immediately preceding finding shall not be read to allow generation from a non-RPS eligible renewable energy resource under this amended PPA to count towards an RPS compliance obligation. Nor shall that finding absolve SDG&E of its obligation to enforce compliance with this amended PPA.
14. The confidential appendices, marked "[REDACTED]" in the public copy of this Resolution, as well as the confidential portions of the advice letter, should remain confidential at this time.
15. AL 2459-E should be approved effective today.

**THEREFORE IT IS ORDERED THAT:**

1. San Diego Gas & Electric Company's Advice Letter 2459-E, requesting Commission review and approval of a renewable power purchase agreement, as amended, with Covanta Delano, Inc., is approved.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on May 9, 2013; the following Commissioners voting favorably thereon:

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PAUL CLANON  
Executive Director

## **Confidential Appendix A**

### Evaluation Summary of the Delano PPA

[Redacted]